

## REMARKS

### I. STATUS OF THE CLAIMS

Claims 36-39 and 47 are canceled herein.

In view of the above, it is respectfully submitted that claims 29-35, 40-46 and 48-50 are currently pending.

### II. REJECTION OF CLAIMS 29-34, 36-43 AND 45-50 UNDER 35 USC 102(E) AS BEING ANTICIPATED BY FUKUSHIMA (US 5,844,710)

In the rejection, the Examiner specifically refers to the configuration in FIG. 8 of Fukushima. Please note that the embodiment in FIG. 9 of Fukushima is similar to that in FIG. 8 of Fukushima.

However, the embodiments in FIGS. 8 and 9 of Fukushima disclose an *optical switch*. See, for example, column 8, lines 22-24, of Fukushima. See also column 1, lines 30-34, of Fukushima.

By contrast, the present invention relates to a *gain equalizer*. Fukushima does not relate to a gain equalizer.

Therefore, to more clearly distinguish over Fukushima, the independent claims are amended to recite that the apparatus is a gain equalizer.

In view of the above, it is respectfully submitted that the rejection is overcome.

### III. REJECTION OF CLAIMS 35, 44, 46-50 UNDER 35 USC 103 AS BEING UNPATENTABLE OVER FUKUSHIMA

Fukushima and the present application are both assigned to Fujitsu Limited, and were commonly owned by Fujitsu Limited at the time the present invention was made.

Moreover, it is respectfully submitted that 35 USC 103(c) applies, so that Fukushima should not preclude patentability of the present invention under 35 USC 103.

In view of the above, it is respectfully submitted that the rejection is overcome.

### IV. IDS

An IDS was filed on July 7, 2003. However, the Examiner has not yet acknowledged the IDS. Copies of the IDS and the PTO mailroom filing receipt are enclosed herewith.

In view of the above, it is respectfully requested that the Examiner acknowledge the IDS filed July 7, 2003.

V. CONCLUSION

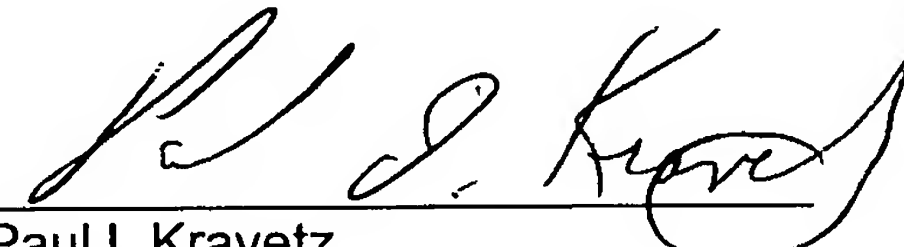
In view of the above, it is respectfully submitted that the application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

If any further fees are required in connection with the filing of this response, please charge such fees to our Deposit Account No. 19-3935.

Respectfully submitted,

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